

UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA

Annie Stewart,  
Plaintiff,  
vs.  
Popeye's Chicken, EON  
Properties, LLC, Nikhil Mehta,  
Timeout Foods, LLC, Steven  
Mercer, John Doe  
1 and 2 Inclusive,  
Defendants.

) Case No.:  
)  
) COMPLAINT FOR DAMAGES RE:  
) VIOLATION OF CIVIL RIGHTS ON  
) BASIS OF DISCRIMINATION IN  
) PUBLIC ACCOMMODATIONS; UNFAIR,  
) UNLAWFUL AND FRAUDULENT BUSINESS  
) PRACTICES; DEMAND FOR JURY TRIAL  
)  
)  
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I

JURISDICTION AND VENUE

1. (a) Jurisdiction of this action is invoked on the basis of 28 USC 1331 and 1343, 42 USC 12101-12102, 12181-12183 and 12201, et. seq. Jurisdiction is also invoked pursuant to 42 USC 1981 [Civil Rights Act of 1991], et seq, which is applicable to causes of action where persons with disabilities have been denied their civil rights. Venue in the Judicial District of Nebraska in the United States District Court is in accord with 28. U.S.C. section 1391(b) because a substantial part of plaintiff's claims arose within the Judicial District of the United States District Court of the District of Nebraska.

(b) Supplemental Jurisdiction. The Judicial District of the United States District Court of the District of Nebraska has supplemental jurisdiction over the state claims alleged in this

1 Complaint pursuant to 28 U.S.C. section 1367(a). Supplemental  
2 jurisdiction is appropriate in this action on the basis that all  
3 the causes of action or claims derived from federal law and those  
4 arising under state law, as herein alleged, arose from a common  
5 nucleus of operative facts. The common nucleus of operative facts,  
6 include, but are not limited to, the incidents whereby plaintiff  
7 was denied full and equal access to Defendant's facilities, goods,  
8 and/or services in violation of both federal and state laws when  
9 plaintiff attempted to enter, use, and/or exit Defendant's  
10 facilities as described within this Complaint. Further, due to  
11 this denial of full and equal access Plaintiff and other person's  
12 with disabilities were injured. Based upon such allegations the  
13 state actions, as stated herein, are so related to the federal  
14 actions that they form part of the same case or controversy, and  
15 the actions would ordinarily be expected to be tried in one  
16 judicial proceeding.

17 II

18 PARTIES

19 2. Defendants, Popeye's Chicken and EON Properties, LLC and at all  
20 times herein mentioned were a duly organized business,  
21 association, or corporation duly authorized to exist and operate  
22 within the State of Nebraska and County of Douglas and/or the  
23 owner, lessee, or tenant of the premises located at 5223 North  
24 30<sup>th</sup>, Omaha, Nebraska 68111.

25 3. Defendant, Timeout Foods, LLC was and at all times herein  
26 mentioned were a duly organized business, association, or  
27 corporation duly authorized to exist and operate within the State  
28

1 of Nebraska and County of Douglas and/or the owner, lessee, or  
2 tenant of the premises located at 3518 N 30<sup>th</sup>, Omaha, NE 68111.

3 4. Plaintiff is informed and believes and thereon alleges that  
4 defendant, Nikhil Mehta, Suite 110-152, 17330 W. Center Road,  
5 Omaha, Nebraska is the owner and/or landlord of the premises  
6 and/or defendants Popeye's Chicken and/or EON Properties, LLC.

7 5. Plaintiff is informed and believes and thereon alleges that  
8 defendant, Steve L. Mercer, 8029 Raven Oaks Dr., Omaha, NE 68152  
9 is the owner and/or landlord of the premises and/or defendants  
10 Timeout Foods, LLC.

11 6. Plaintiff is informed and believes and thereon alleges that  
12 each of the named defendants herein operates a business and  
13 or/facility of public accommodation as defined and described  
14 within 42 USC 12181(7)(B) and (L) of the American with  
15 Disabilities Act [ADA] and as such must comply with the ADA under  
16 provisions of Title III therein.

17 5. Plaintiff is ignorant of the defendants sued as Doe 1-2 herein,  
18 and therefore sues them in their fictitious names as Doe  
19 defendants. Plaintiff is informed and believes and thereon alleges  
20 that Does 1-2 are the owners, operators, lessees or tenants of the  
21 subject property and each of the Doe defendants at all times  
22 herein was acting as the agent and or representative of each other  
23 and thereby are responsible in some manner for the injuries and  
24 damages complained of herein. Plaintiff will seek leave of court  
25 to amend this complaint to name Doe defendants when the same is  
26 ascertained.

27 III

28 GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

6. Plaintiff is a female who is disabled and has limited mobility when walking and standing. She has limited control over her lower extremities but is able to transport herself and to affect most of the basic necessities of everyday existence. Plaintiff's disability substantially limits one or more of life's major activities and therefore she is disabled as defined under 42 USC 12102(2)(A)(B)(C).

7. On or about September 20, 2015, plaintiff attempted to enter the premises of the defendant Popeye's Chicken to utilize goods and/or services offered by defendants. When Plaintiff attempted to enter the commercial buildings she had difficulty entering and using the facility because it failed to comply with federal ADA Access Guidelines For Building and Facilities [hereinafter "ADAAG"]

8. The specific difficulty Plaintiff had in entering and utilizing Defendants' facility and which amount to a violation of ADAAG are, with regard to Popeye's Chicken, as follows:

#### NUMBER OF VIOLATIONS

- 1 Designated Disabled "VAN ACCESSIBLE" Parking- Space  
(ADAAG 4.1.2(5)(b))
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Width  
(ADAAG 4.1.2(5)(b))
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Length  
(ADAAG 4.1.2(5)(b))
- 1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Signage  
(ADAAG 4.1.2(5)(b))
- 1 Regular Disabled Parking Space-  
(ADAAG 4.6.3 (18' Length x 9' Width Min))

- 1      1      Regular Disabled Parking Space - Width  
2                      (ADAAG 4.6.3 (9' Width Min))
- 3      1      Regular Disabled Parking Space- Length  
4                      (ADAAG 4.6.3 (18' Length))
- 5      1      Van Accessible Aisle-  
6                      (ADAAG 4.6.3)
- 7      1      Van Accessible Aisle - Width  
8                      (ADAAG 4.6.3)
- 9      1      Van Accessible Aisle - Length  
10                      (ADAAG 4.6.3)
- 11      1      Signage Installed -(Each Space)  
12                      (ADAAG 4.6.4)
- 13
- 14      1      Additional Signage- (Van Accessible) (ADAAG 4.6.4)
- 15
- 16      1      Designated Disabled Parking Space Signage- Proper Height  
17                      (ADAAG 4.6.4)
- 18      1      Parking Space Emblem – Proper Size  
19                      (ADAAG 4.6.4)
- 20      1      Curb Ramp Project into Vehicular Traffic  
21                      (ADAAG 4.7.6)
- 22      1      Bathroom – International Symbol Signage  
23                      (ADAAG 4.30.6)
- 24      1      Lavatories – Insulated Covers  
25                      (ADAAG 4.19.4; 4.24.6)
- 26      1      Lavatories – Knee Clearance  
27                      (ADAAG 4.19.2)
- 28      1      Grab Bars - Length

(ADAAG 4.17.6)

1 Grab Bars – Proper Extension from Water Closet  
(ADAAG 4.17.6)

1 Grab Bars – Distance From Rear Wall  
(ADAAG 4.17.6)

1 Bathroom - Rear Grab Bar  
(ADAAG 4.17.6)

1 Accessories and Fixtures  
(ADAAG 4.23.7)

1 Toilet Stall – Size/Clearance  
(ADAAG 4.17.3)

1 Improper Hardware on Door/Stall  
(ADAAG 4.13.9)

9. On or about September 20, 2015, plaintiff attempted to enter the premises of the defendant Timeout Chicken to utilize goods and/or services offered by defendant. When Plaintiff attempted to enter the commercial buildings she had difficulty entering and using the facility because it failed to comply with federal ADA Access Guidelines For Building and Facilities [hereinafter "ADAAG"]

10. The specific difficulty Plaintiff had in entering and utilizing Defendants' facility and which amount to a violation of ADAAG are, with regard to Timeout Chicken, as follows:

**NUMBER OF VIOLATIONS**

1 Designated Disabled "VAN ACCESSIBLE" Parking- Space  
(ADAAG 4.1.2(5)(b))

1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Width  
(ADAAG 4.1.2(5)(b))

- 1 1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Length  
2 (ADAAG 4.1.2(5)(b))
- 3 1 Designated Disabled "VAN ACCESSIBLE" Parking Space- Signage  
4 (ADAAG 4.1.2(5)(b))
- 5 1 Regular Disabled Parking Space- Exist/Improper  
6 (ADAAG 4.6.3 (18' Length x 9' Width Min))
- 7 1 Regular Disabled Parking Space - Width  
8 (ADAAG 4.6.3 (9' Width Min))
- 9 1 Regular Disabled Parking Space- Length  
10 (ADAAG 4.6.3 (18' Length))
- 11 1 Van Accessible Aisle-  
12 (ADAAG 4.6.3)
- 13 1 Van Accessible Aisle - Width  
14 (ADAAG 4.6.3)
- 15 1 Van Accessible Aisle - Length  
16 (ADAAG 4.6.3)
- 17 1 Signage Installed -(Each Space)  
18 (ADAAG 4.6.4)
- 19 2 Additional Signage- (Van Accessible) (ADAAG 4.6.4)
- 20 1 Designated Disabled Parking Space Signage- Proper Height  
21 (ADAAG 4.6.4)
- 22 1 Parking Space Emblem – Proper Size  
23 (ADAAG 4.6.4)
- 24 1 Bathroom – International Symbol Signage  
25 (ADAAG 4.30.6)
- 26 2 Lavatories – Insulated Covers  
27 (ADAAG 4.19.4; 4.24.6)
- 28 2 Lavatories – Knee Clearance  
(ADAAG 4.19.2)
- 1 Grab Bars - Length  
(ADAAG 4.17.6)

2 Grab Bars – Proper Extension from Water Closet  
(ADAAG 4.17.6)

2 Grab Bars – Distance From Rear Wall  
(ADAAG 4.17.6)

1 Bathroom - Rear Grab Bar  
(ADAAG 4.17.6)

1 Accessories and Fixtures  
(ADAAG 4.23.7)

2 Toilet Stall – Size/Clearance  
(ADAAG 4.17.3)

2 Improper Hardware on Door/Stall  
(ADAAG 4.13.9)

11. Based upon the above facts, Plaintiff has been discriminated against and will continue to be discriminated against unless and until Defendants are enjoined and forced to cease and desist from continuing to discriminate against Plaintiff and others similarly situated.

12. Pursuant to federal [ADA], Defendants are required to remove barriers to their existing facilities. Defendants have been put on notice pursuant to the ADA prior to the statutory effect of the ADA on January 26, 1992 that Defendants and each of them had a duty to remove barriers to persons with disabilities such as plaintiff. Defendants also knew or should have known that individuals such as plaintiff with a disability are not required to give notice to a governmental agency prior to filing suit alleging Defendants' failure to remove architectural barriers.

13. Plaintiff believes and thereon allege that Defendants' facilities and or buildings, as described herein, have other access violations not directly experienced by Plaintiff, which



1 preclude or limit access by others with disabilities, including,  
2 but not limited to, Space Allowances, Reach Ranges, Accessible  
3 Routes, Protruding Objects, Ground and Floor Surfaces, Parking and  
4 Passenger Loading Zones, Curb Ramps, Ramps, Stairs, Elevators,  
5 Platform Lifts (Wheelchair Lifts), Windows, Doors, Entrances,  
6 Drinking Fountains, and Water Coolers, Water Closets, Toilet  
7 Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
8 Handrails, Grab Bars, Telephones, Controls and Operating  
9 Mechanisms, Alarms, Detectable Warnings and Signage.

10 14. Accordingly, Plaintiff alleges Defendants are required to  
11 remove all architectural barriers, known or unknown. Also,  
12 Plaintiff alleges Defendants are required to utilize the ADA  
13 checklist for Readily Achievable Barrier Removal approved by the  
14 United States Department of Justice and created by Adaptive  
15 Environments.

16 15. Plaintiff desires to return to Defendants' places of business  
17 and utilize their facilities without being discriminated against  
18 in the immediate future.

19 IV

20 FIRST CAUSE OF ACTION

21 (Violation of Civil Rights-American With Disabilities Act)

22 16. Plaintiff realleges the allegations in paragraphs 1 through 12  
23 as though set forth fully herein.

24  
25 Claim 1: Denial of Full and Equal Access

26 17. Based on the facts asserted above Plaintiff has been denied  
27 full and equal access to Defendants' goods, services, facilities,  
28 privileges, advantages, or accommodations. Defendants are public

1 accommodations owned, leased and/or operated by Defendants and  
2 each of them. Defendants' existing facilities and/or services  
3 failed to provide full and equal access to Defendants' facility as  
4 required by 42 U.S.C. section 12182(a). Thus, Plaintiff was  
5 subjected to discrimination in violation of 42 U.S.C.  
6 12182(b) (2) (A) (ii) (iv); 42 USC 1981 and 42 U.S.C. section 12188  
7 because Plaintiff was denied equal access to Defendants' existing  
8 facilities.

9 18. Plaintiff has a physical impairment as alleged herein because  
10 this condition affects one or more of the following body systems:  
11 neurological, musculoskeletal, special sense organs, and/or  
12 cardiovascular. Further, the physical impairments substantially  
13 limits one or more of the following major life activities: walking  
14 and mobilization. In addition, Plaintiff cannot perform one or  
15 more of the said major life activities in the manner speed, and  
16 duration when compared to the average person. Moreover, Plaintiff  
17 has a history of or has been classified as having a physical  
18 impairment as required by 42 U.S.C. section 12102(2) (A).

19  
20 Claim 2: Failure to Remove Architectural Barriers

21 19. Based upon the facts alleged herein, Plaintiff was denied  
22 full and equal access to Defendants' goods, services, facilities,  
23 privileges, advantages, or accommodations within a public  
24 accommodation owned leased, and/or operated by the named  
25 Defendants. Defendants individually and collectively failed to  
26 remove barriers as required by 42 U.S.C. 12182(a).

1 20. Plaintiff is informed and believes, and thus alleges that  
2 architectural barriers which are structural in nature exist at the  
3 following physical elements of Defendants' facilities:

4 Space Allowance and Reach Ranges, Accessible Route, Protruding  
5 Objects, Ground and Floor Surfaces, Parking and Passenger Loading  
6 Zones, Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts  
7 (Wheelchair Lifts), Windows, Doors, Entrances, Drinking Fountains  
8 and Water Coolers, Water Closets, Toilet Stalls, Urinals,  
9 Lavatories and Mirrors, Sinks, Storage, Handrails, Grab Bars, and  
10 Controls and Operating Mechanisms, Alarms, Detectable Warnings,  
11 Signage, and Telephones.

12 21. Pursuant to 42 USC section 12182(b)(2)(iv), Title III requires  
13 places of public accommodation to remove architectural barriers  
14 that are structural in nature within existing facilities. Failure  
15 to remove such barriers and disparate treatment against a person  
16 who has a known association with a person with a disability are  
17 forms of prohibited discrimination. Accordingly, Plaintiff was  
18 subjected to discrimination in violation of 42 USC  
19 12182(b)(2)(A)(iv) and 42 USC 12182 (b)(2)(A)(iv); 42 USC 1981 and  
20 42 USC 12188.

21  
22 Claim 3: Failure to Modify Practices, Policies And Procedures

23 22. Based on the facts alleged in this Complaint Defendants failed  
24 and refused to provide a reasonable alternative by modifying its  
25 practices, policies and procedures in that they failed to have a  
26 scheme, plan, or design to assist Plaintiff and/or others  
27 similarly situated in entering and utilizing Defendants' services,  
28 as required by 42 U.S.C. section 12188(a). Thus, Plaintiff was

1 subjected to discrimination in violation of 42 U.S.C. section  
2 12182(b)(2)(A)(iv); 42 U.S.C. 1981 and 42 U.S.C. section 12188  
3 because Plaintiff was denied equal access to Defendants' existing  
4 facilities.

5 23. As a result of the wrongful and discriminatory practices of  
6 defendants, plaintiff has suffered actual damages consisting of  
7 special damages and general damages in an amount to be determined  
8 at time of trial herein.

9 24. Pursuant to the provisions of 42 USC 12188 plaintiff seeks  
10 injunctive relief and an order directing defendants to cease and  
11 desist from discriminating against plaintiff and others similarly  
12 situated and for an order that defendants comply with the  
13 Americans With Disabilities Act forthwith.

14 25. Under the provisions of 42 USC 12205 plaintiff is entitled to  
15 an award of reasonably attorney's fees and costs and requests that  
16 the court grant such fees and costs as are appropriate.

17 V

18 SECOND CAUSE OF ACTION

19 (Violation of Civil Rights 42 U.S.C. 1991)

20 26. Plaintiff realleges the allegations of the First Cause of  
21 Action as though set forth fully herein.

22 27. The provisions of 42 U.S.C. 1981 (As amended by the Civil  
23 Rights Act of 1991) provide that Plaintiff as a person with  
24 disabilities cannot be discriminated against with regard to the  
25 ability to enter into, to make or to enforce contracts. In  
26 enacting the Civil Rights Act of 1991 congress established a three  
27 tier system of remedies for a broad range of discretionary  
28 conduct, including violations of the Americans With Disabilities

1 Act, wherein disabled individuals such as plaintiff are denied  
2 equal access to facilities they wish to conduct business in and  
3 therefore are precluded from making, entering into and enforcing  
4 contracts that plaintiff and others similarly situated may desire  
5 to effect.

6 28. Defendants, because they have individually and/or collectively  
7 denied plaintiff access to their premises, goods and services,  
8 have denied him the right to make, enter into or enforce a  
9 contract and therefor have violated the provisions of 42 U.S.C.  
10 1991 all to Plaintiff's damage in an amount to be determined at  
11 time of trial herein.

12 29. As a result of Defendants' actions Plaintiff was humiliated,  
13 embarrassed and discouraged and upset emotionally and physically  
14 and suffered damages according to proof.

15 30. The actions of the Defendants were intentional, outrageous and  
16 done with reckless disregard of Plaintiff's rights and therefore  
17 entitle her to an award of punitive damages.

18 31. By reason of Defendants' actions Plaintiff was caused to incur  
19 costs and expenses of litigation, including attorney's fees, to  
20 seek and redress his civil rights. Plaintiff therefore seeks an  
21 award of costs and attorney's fees associated with the necessity  
22 of brining this lawsuit.

23 VI

24 THIRD CAUSE OF ACTION

25 (Violation of Civil Rights Under Nebraska Accessibility Laws)

26 32. Plaintiff realleges the allegations of the Second Cause of  
27 Action as though set forth fully herein.

28 (a) Denial Of Full And Equal Access

1 33. Plaintiff has been denied full and equal access to Defendants'  
2 goods services, facilities, privileges, advantages, or  
3 accommodations within a public accommodation owned, leased, and/or  
4 operated by Defendants in violation of Neb. Rev. Stat. 20-132.

5 (b) Failure To Modify Practices, Policies And Procedures

6 34. Defendants have failed and refused and continue to fail and  
7 refuse to provide a reasonable alternative to allow plaintiff  
8 equal access to their facility by modifying their practices,  
9 policies, and procedures in that that they failed to have s  
10 scheme, plan, or design to assist Plaintiff and others similarly  
11 situated in entering and utilizing Defendants' goods or services.  
12 Accordingly Defendants have wrongfully discriminated against  
13 Plaintiff.

14 VII

15 FOURTH CAUSE OF ACTION

16 (Violation of Civil Rights Act)

17 35. Plaintiff realleges the allegations of the Third Cause of  
18 Action as though set forth fully herein.

19 36. Defendants are in violation (b) by failing and refusing to  
20 provide free and equal access to Plaintiff to their facility on  
21 the same basis as other persons not disabled. By their failure to  
22 provide equal access to Plaintiff as herein alleged, Defendants  
23 have also violated 42 U.S.C. section 12182(b)(2)(A)(iv)

24 37. Defendants and each of them, at all times prior to and  
25 including September 20, 2015, respectively and continuing to the  
26 present time, knew that persons with physical disabilities were  
27 denied their rights of equal access to all portions of this public  
28

1 facility. Despite such knowledge, Defendants, and each of them,  
2 failed and refused to take steps to comply with the applicable  
3 access statutes and despite knowledge of the resulting problems  
4 and denial of civil rights suffered by Plaintiff and other  
5 similarly situated persons with disabilities.  
6

7 38. Defendants and each of them have failed and refused to take  
8 action to grant full and equal access to person with physical  
9 disabilities. Defendants have carried out a course of conduct of  
10 refusing to respond to, or correct complaints about unequal access  
11 and have refused to comply with their legal obligations to make  
12 the subject facility accessible pursuant to ADAAG. Such actions  
13 and continuing course of conduct by Defendants, and each of them,  
14 evidence despicable conduct in conscious disregard of the rights  
15 and/or safety of Plaintiff and those similarly situated and thus  
16 justify an award of treble damages or alternatively an award of  
17 punitive damages in an appropriate amount.  
18

19 39. Plaintiff has suffered emotional and physical damage and  
20 continues to suffer such damages all in an amount to be determined  
21 at time of trial.  
22

23 40. Plaintiff seeks an award of reasonable attorney's fees and  
24 costs as a result of having to bring this action. Plaintiff  
25 requests the court to award such fees in an appropriate amount.  
26  
27  
28

VIII

FIFTH CAUSE OF ACTION

(Unfair And Unlawful Business Practice)

41. Plaintiff realleges the allegations of the Fourth Cause of Action as though set forth fully herein.

42. Defendants, as alleged herein, are in violation of the Americans With Disabilities Act, in that they have denied equal access to their places of public accommodation to Plaintiff and others similarly situated to Plaintiff.

43. Defendants have failed and refused and continue to refuse to comply with equal access laws all in violation of 42 USC 12181-12183; 42 USC 1981; and 42 USC 12188. Defendants are also in violation of the indicated statutes because of their failure to remove architectural barriers, which prevent equal access to their facility by disabled persons and because of their failure to modify their practices, policies and procedures to have a scheme, plan, or design to assist Plaintiff and others similarly situated to enter and utilize Defendants' services as required.

IX

DEMAND FOR JURY

44. Plaintiff respectfully requests that the claims made herein be heard and determined by a jury.

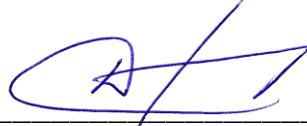
WHEREFORE PLAINTIFF PRAYS:

1. For general damages according to proof;
2. For special damages according to proof;
3. For Injunctive relief pursuant to 42 U.S.C. 12188(a)



- 1 4. For an award of attorney's fees pursuant to 42 U.S.C. 1988, 42
- 2 U.S.C. 1981, 42 U.S.C. 12205
- 3 5. For treble damages
- 4 6. For punitive damages according to proof;
- 5 7. For a Jury Trial;
- 6 8. For costs of suit incurred herein and;
- 7 9. For such other and further relief as the court deems proper.

8 Respectfully submitted,



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